

MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion

No. 03-29

Item No. 03-029

The ethics law's prohibition against the intentional misuse of prestige of office precludes a public employee from accepting remuneration for any service directly and immediately related to that employee's governmental activities. A public employee who works in the Office of Management and Budget wants to know whether he can accept an offer to give a one day seminar on the local government budgeting process. The offer includes airfare, hotel accommodations, and a \$500 honorarium. Because the employee's seminar will draw almost exclusively upon County budgeting practices, as opposed to a broader discussion of local government budgeting practices, we conclude that he cannot accept the \$500 honorarium absent a waiver of the prestige of office prohibition. But the employee may accept an offer of reasonable expenses for airfare and hotel accommodations under § 19A-16(c)(4).

While the prestige of office prohibition directly proscribes an employee from intentionally misusing the influence of the employee's position, a public employee also violates the prohibition against the use of prestige of office for private gain by accepting remuneration for any service directly and immediately related to that employee's governmental activities. The Commission stated this rule in Advisory Opinion No. 02-011 (Dec. 20, 2002). The specific issue in that case involved command police officers who received requests to speak at law enforcement seminars about their recent experience with the sniper shootings. The requests included offers of "honoraria" for speaking at these events. The Commission concluded that "giving a presentation or participating as a panelist, for a fee or honorarium, in the discussion of a subject that is directly and immediately related to one's governmental activities constitutes the use of the prestige of one's office, and, therefore, is prohibited."

As the state ethics commission has noted, "more than common subject matter or expertise between State and private employment is required to support a finding of intentional use of prestige."¹ Instead, there is a continuum with matters that are "directly and immediately related" to an employee's governmental activities at one end, and matters that are simply subject matter related at the other end. The Commission recently addressed this issue in *Advisory Opinion No. 03-011* (Mar. 20, 2003):

Accepting remuneration for services directly and immediately related to an employee's governmental activities violates the prestige of office prohibition because, to paraphrase the state ethics commission, those services "go with the job."² In other words, a public employee, so long as he or she remains a public employee, cannot receive any gain beyond his

¹ Opinion No. 99-06 (Aug. 27, 1999), available at COMAR 19A.99.06.

² Opinion No. 80-7 (May 5, 1980), available at COMAR 19A.80.07.

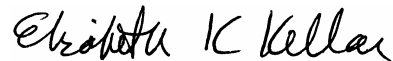
or her salary for providing outside services directly and immediately related to his or her job. That is not to say, for example, that a county attorney cannot teach a class on local government law or a police officer cannot write a book on hostage negotiation tactics. But it is a different matter if the county attorney is to be paid for recounting his handling of a specific case or the police officer paid to recount her day-to-day involvement in a high-profile hostage drama.

In this case, we believe that the employee's proposed seminar falls closer to those matters which are directly and immediately related to his governmental activities, rather than matters merely related by subject matter. The proposed seminar will draw primarily upon the employee's experience with Montgomery County, explaining how the budget process works in Montgomery County, as opposed to a more general lecture on local government budgeting principles.

For these reasons, we find that the employee cannot accept the \$500 honorarium absent a waiver of the prohibition against the misuse of prestige of office. Rather than seek a waiver, the employee has graciously requested that the County receive the honorarium if his receipt of it would violate the ethics law.

The ethics law does not prohibit the seminar sponsor from giving the \$500 to the County. Section 19A-14(a) prohibits an employee from intentionally using the prestige of office for private gain or the gain of another. Thus, the employee cannot accept the honorarium or assign it to another. But, just as the prohibition upon an employee's acceptance of unsolicited gifts does not apply to unsolicited gifts made to the County (19A-16(e)), we do not believe that § 19A-14(a) prohibits the County from accepting the \$500. In short, the County is not "another" under section 19A-14(a).

FOR THE COMMISSION:



Date: November 14, 2003

Elizabeth K. Kellar, Chair